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Paper No. 9

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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of:
THORMAN, CHRISTOPHER SCOTT, *et al.*
Application No. 09/597,069
Filed: 06/20/2000
Attorney Docket No. 15301-US
Title of Invention :
CLEANING DEVICE FOR A MOWER CUTTING
CHAMBER

DECISION ON
PETITION

This is a decision on the renewed petition under 37 C.F.R. §1.10(c), filed December 11, 2000, requesting that the above-identified application be accorded a filing date of June 19, 2000, rather than the presently accorded filing date of June 20, 2000.

THE RULE

37 C.F.R. § 1.10 Filing of correspondence by "Express Mail."

(a)...

(b)...

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

(d)...

...

ANALYSIS

The decision of November 8, 2000 dismissed Petitioner's petition for a June 19, 2000 filing date for failure to meet the requirement of including with the petition "a true copy of the "Express Mail" mailing label showing the "date-in", and of any other official notation by the USPS relied upon to show the date of deposit".¹ In this petition for reconsideration, Petitioner alleges that the United States Postal Service (hereinafter "USPS") did not provide Petitioner with the required copy of the "Express Mail" label and that, therefore, Petitioner does not have a copy to provide. Petitioner then interprets the rule to allow proof of deposit by means of either an "Express Mail" label or some other official USPS documentation. In making this interpretation, Petitioner relies on the following passage of rule 1.10(c).

"(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation..."

It is apparently from that passage that Petitioner reaches the conclusion that "when there is a discrepancy between the filing date accorded by the office and date of deposit, an applicant can show that discrepancy by either :

'The date-in', on the 'Express Mail' mailing label, or

'other official USPS notation'."²

This is an incorrect interpretation. Petitioner's focus on the above-quoted section ignores the rest of the rule, which is reproduced below, with the pertinent part in italics.

"(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, *provided that:*

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

¹ Decision on Petition, U.S. Patent Application No. 09/597,069, Paper No. 4

² Renewed Petition Under 37 C.F.R. §1.10(c), Paper No. 8.

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) *The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.*

A plain reading of the italicized portion leads to the conclusion that the portion that Petitioner relies on is simply a passage stating a remedy that can be obtained "*provided that*" the petition is accompanied by at least a true copy of the "Express Mail" label showing the "date in", if not also a true copy of "any other official notation of the USPS relied upon to show the date of deposit". In other words, a true copy of the "Express Mail" is minimal, not optional, documentary evidence required for a successful petition under 37 C.F.R. §1.10(c).

It is noted that Petitioner did supply "other" USPS notation in the form of a printout of the USPS official mail tracking and delivery web site, showing delivery of the application to the USPTO on June 20, 2000. However, it is also noted that the date of delivery to the USPTO is not at issue and that therefore, this evidence does nothing more than confirm the current filing date accorded to this application while raising the implication that the application was probably deposited with the USPS on some undetermined earlier date. Again, Petitioner needs to supply the "Express Mail" receipt in order to establish the exact earlier date of deposit.

In light of the foregoing, because this petition still lacks a true copy of the Express Mail mailing label as required under 37 C.F.R. §1.10(c)(3) above, *this petition is **dismissed**.*

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.10(c)".

Further correspondence with respect to this matter should be addressed as follows:

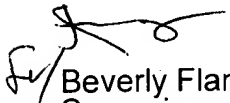
By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
Four Crystal Plaza, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

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Telephone inquiries concerning this matter may be directed to Petitions Attorney Scott M. Ledford in the Office of Petitions at (703) 306-5593.


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